

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

CSX TRANSPORTATION, INC.,

Plaintiff,

v.

KEN'S FOODS, INC.

Defendant.

CIVIL ACTION NO.:

COMPLAINT

Plaintiff CSX Transportation, Inc. ("CSX") hereby files this Complaint against defendant, Ken's Foods, Inc. ("Ken's Foods"), and avers as follows:

PARTIES

1. CSX is a corporation incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Jacksonville, Florida.

2. Ken's Foods is a corporation incorporated under the laws of the Commonwealth of Massachusetts with its principal place of business in Marlborough, Massachusetts.

JURISDICTION

3. Jurisdiction in this matter is based upon 28 U.S.C. § 1337 as this is a cause of action arising under the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*

4. Jurisdiction in this matter is also based upon 28 U.S.C. § 1332(a) as the matter in controversy exceed \$75,000.00 and there is complete diversity of citizenship among the parties.

VENUE

5. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391(a) and (b) because Ken's Foods resides in this judicial district and a substantial part of the events or omissions giving rise to CSX's cause of action occurred within this district.

CAUSE OF ACTION

6. CSX operates as an interstate rail carrier subject to the jurisdiction of the United States Surface Transportation Board, and is governed by the provisions of the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*

7. Between July 2014 and March 2015, CSX transported shipments of freight to Ken's Foods via interstate rail (the "Shipments").

8. The Shipments originated in California and were transported by Union Pacific from California to Chicago, Illinois.

9. The Shipments were interchanged with CSX in Chicago and CSX transported the shipments from Chicago to their destinations in Foxboro and Readville, Massachusetts.

10. The Shipments were shipped according to bills of lading marked collect and naming Ken's Foods as the consignee.

11. The bills of lading also listed DSA-Management, Inc. ("DSA") as the party to receive invoices for freight charges.

12. Upon information and belief, DSA is a third-party logistics company that acted as an agent of Ken's Foods in arranging and accepting rail delivery of the Shipments.

13. CSX invoiced DSA for the freight charges owed for the Shipments.

14. DSA failed or otherwise refused to pay CSX for the outstanding freight charges owed for the Shipments.

15. As the named consignee on all applicable bills of lading, Ken's Foods is ultimately liable to CSX for the freight charges incurred for the Shipments should its agent fail to pay the freight charges.

16. The outstanding balance of freight charges owed to CSX for the Shipments is not less than \$701,301.00.

WHEREFORE, plaintiff, CSX Transportation, Inc., respectfully demands that judgment be entered in its favor and against defendant, Ken's Foods, Inc., in an amount no less than \$701,301.00, plus

other related charges which may accrue, as well as interest, costs, attorneys' fees, and such other relief as the Court deems just.

BACON WILSON, P.C.

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Dated: January 26, 2016